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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, Room TW-A325
Washington, D.C. 20554

In the matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, **CC Docket No. 96-128**

Dear Ms. Salas:

Please find enclosed for filing an original and five copies of the "Comments of the RBOC/GTE Payphone Coalition on The Colorado Payphone Association's Petition for Reconsideration" in the above-captioned proceeding.

Sincerely,

Michael K. Kellogg /SAL

Michael K. Kellogg

Enclosures

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JUL 7 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of

Implementation of the Pay Telephone)
Reclassification and Compensation) CC Docket No. 96-128
Provisions of the)
Telecommunications Act of 1996)

COMMENTS OF THE RBOC/GTE PAYPHONE COALITION ON THE COLORADO PAYPHONE ASSOCIATION'S PETITION FOR PARTIAL RECONSIDERATION

The RBOC/GTE Payphone Coalition (the "Coalition") hereby comments on the Petition for Reconsideration filed by the Colorado Payphone Association (the "CPA"). The CPA raises two issues that the Coalition believes merit immediate Commission action: IXCs' implementation of targeted call blocking, and the use of the 11A model payphone to calculate coin mechanism costs to be deducted from the coinless default rate.

With respect to the first issue, the Coalition supports the reasoning underlying the CPA's petition — that is, IXCs will never implement call blocking when to do so would jeopardize the reduced-fare ride that the FCC has granted by administrative fiat. But the Coalition believes that, rather than mandate targeted call blocking, the Commission should leave that choice up to the IXCs. Instead, the Commission should eliminate — within 12 months of the release of its Order on Reconsideration — the cap that it has placed on the default rate. That is, the Commission should permit PSPs to set a rate of their choice — which IXCs could choose to pay, to negotiate around, or to avoid by blocking calls from some or all payphones. If IXCs then decide to implement targeted call blocking to improve their bargaining position, so be it. If not, they will be required to pay the price for the services they choose to consume.

As to the second issue, even if the Commission could justify its decision to exclude part of the capital cost of the payphone from the default rate — which it cannot — it wildly overestimated the costs of the payphone's "coin mechanism" by using a coinless payphone that is not comparable either in terms of durability or functionality to a coin-capable payphone. The Coalition has set forth arguments to this effect already. *See* Petition for Reconsideration of the RBOC/GTE/SNET Payphone Coalition (filed Dec. 1, 1997). The Commission failed to address most of these arguments in its *Third Report and Order*,[1] simply deferring to AT&T's self-serving accounting of payphone costs. It should correct that error on reconsideration.

I. THE COMMISSION SHOULD DEREGULATE THE PER-CALL COMPENSATION RATE

In the *First Report and Order*,[2] the Commission made a fundamental policy decision that rates for payphone compensation should be set by the market, not by regulation. The Commission found that "the most appropriate way to ensure that PSPs receive fair compensation for each call is to let the market set the price for individual calls originated on payphones." *Id.* at 20549, ¶ 49. Indeed, the Commission "define[d] 'fair compensation' . . . as where there is a willing seller and a willing buyer at a price agreeable to both." *Id.* at 20568, ¶ 52.

[1]Third Report and Order, and Order on Reconsideration of the Second Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 2545 (1999).

[2]First Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541 (1996).

In the case of dial-around and subscriber 800 calls, the Commission concluded that it was unable to allow the market to set the per-call compensation rate, because, on the sellers' side — the side of the PSPs — TOCSIA requires the sellers to send calls to non-presubscribed carriers, whether or not they are "willing." *See id.* But the Commission has never suggested that the IXCs' are unwilling *buyers* — to the contrary, the Commission has found that IXCs are able to block calls from payphones, and, if they choose to accept those calls, they are, by definition, willing buyers.

The Commission has noted that IXCs have lacked the capacity to block payphone calls on a targeted basis. This is significant, according to the Commission, because IXCs may face the choice of blocking all calls from payphones, or none. *See* Third Report and Order ¶ 65. And the IXCs' undisputed advantage in negotiating a per-call compensation rate for dial-around and subscriber 800 calls may be attenuated as a result. *Id.* But the Commission did not deny that, if targeted call blocking were in place, it would be appropriate to move to a market-based per-call compensation rate. *Id.* ¶ 68. The Commission therefore gave the IXCs clear notice: implement targeted call blocking, and the Commission will reward you by taking away the windfall it has granted in the form of a default rate that is far below any reasonable measure of the market value of the services that PSPs provide. This, of course, is hardly a way to encourage action by the IXCs.

The Commission *can*, however, ensure that the IXCs move to implement targeted call blocking — something that the Commission has explicitly stated they should do — by deregulating the per-call compensation rate. Instead of setting a default rate by administrative fiat — something that will always work in the IXCs' favor[3] — the Commission should explicitly authorize PSPs to charge whatever per-call rate they choose in the absence of a negotiated agreement. IXCs would *not* be required to pay that rate — they could instead negotiate a different rate with the PSP, or, if the PSP's price still did not seem favorable, block the calls. But if a carrier *did* choose to accept a call from a payphone, it would be required to pay the rate set by the PSP, or a different rate to be negotiated between the parties.

The mechanics of such a system would be straightforward. PSPs could be required to announce — with an appropriate lead time (three months, for example) — the rate that an IXC would be charged for each call routed from each of the PSPs' payphones.[4] The payphones in question would be identified by their ANIs. IXCs would track calls by ANIs — as they are already required to do — and pay for those calls they choose to accept according to the rate set by the PSP. Failure to pay would subject an IXC to a complaint before the Commission or to a suit in federal court.

Under such circumstances, all parties will have appropriate incentives to negotiate compensation arrangements and to use existing technology to make the system work efficiently. In particular, IXCs will have the appropriate incentives to implement targeted call blocking. The

[3]No matter what default rate the Commission sets, an IXC may choose not to pay that rate or may negotiate a lower one. PSPs, of course, have no such option, because they are required by law to permit IXCs to use their payphones.

[4]The rate could be announced through the Internet; PSPs could announce on their own or use the services of an industry clearinghouse.

Commission will not be required to order the IXCs to implement such capability — rather, they will do so of their own accord.[5]

The only proper question for the Commission is what an appropriate transition period to a market system would be. There is no need to wait until the expiration of the current default rate in 2002. As the Commission has noted, the IXCs already possess the necessary technology to permit them to block calls from selected payphones; implementation of that technology in their networks should be a relatively straightforward matter. The sooner that the IXCs are required to engage in negotiations and to undergo the discipline of the market, the better. Accordingly, a twelve-month transition would be appropriate.

II. THE COMMISSION GROSSLY OVERSTATED THE COST OF THE COIN MECHANISM

The Commission's decision to treat the cost of the coin mechanism as uniquely attributable to coin calls was erroneous and is the subject of a pending appeal before the D.C. Circuit. But even if the Commission were able to deduct those costs from the default rate, it erred by grossly overstating those costs. The CPA's arguments on these points largely restate the arguments set forth in the Coalition's prior Petition for Reconsideration, and the Coalition accordingly agrees that reconsideration is (still) warranted on this point. As the CPA rightly points out, the Commission only addressed one of the many points in the Coalition petition, and its conclusion with respect to this point — the useful life of a coinless phone — ignored record evidence in favor of AT&T's self-serving statements.

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[5]If the Commission does not choose to deregulate the per-call compensation rate, it should follow the second-best course suggested by the CPA and order IXCs to implement targeted call blocking by a date certain — say, January 1, 2001 — as a prelude to subsequent deregulation of the per-call rate.

In addition to the arguments that the Coalition has already raised, however, the CPA raises several important additional points. For example, the CPA emphasizes that it is inappropriate to treat the 11A model as typical of the coinless phones actually deployed in the marketplace, because AT&T itself has acknowledged that it has deployed twice as many card-type coinless phones as 11A-type payphones. CPA Petition at 10. To treat the 11A as a typical coinless phone, therefore, is plainly contrary to the evidence in the record. This is particularly significant because, on a forward-looking basis, few PSPs are likely to install a phone with as limited functionality as an 11A model. By limiting PSPs to recovery for the costs of the 11A model, rather than a coinless phone of durability and function comparable to a typical smart payphone instrument, the Commission has thus deprived PSPs of recovery for costs that, even by the Commission's own reckoning, PSPs should be able to recover from coinless calls.

CONCLUSION

For the foregoing reasons, (1) the Commission should deregulate the per-call compensation rate, effective twelve months from the date of its forthcoming Order, in accordance with the methodology described above; in the alternative, the Commission should order IXCs to implement targeted call blocking by a date certain as a prelude to such deregulation; and (2) the Commission should recalculate the per-call rate using a realistic assessment of coin mechanism costs.

Respectfully submitted,

Michael K. Kellogg /

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Counsel for the RBOC/GTE
Payphone Coalition

July 7, 1999

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of July 1999, I caused one copy of the foregoing "Comments of the RBOC/GTE Payphone Coalition on The Colorado Payphone Association's Petition for Reconsideration" of Ameritech, Bell Atlantic Corporation, BellSouth Corporation, GTE Service Corporation, SBC Communications Inc., and U S WEST, Inc. to be served upon the parties listed on the attached service list by first-class mail, postage prepaid.

Michelle Dawson

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